

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-CV-12253MLW

STEVEN McDERMOTT and)
STACEY McDERMOTT)
Plaintiffs,)
vs.)
)
FEDEX GROUND PACKAGE)
SYSTEMS, INC., T.S. PRUITT,)
Defendants)
)

**PLAINTIFFS ASSENTED MOTION FOR LEAVE TO FILE SECOND
AMENDED COMPLAINT**

I. INTRODUCTION

Now come the Plaintiffs, Steven McDermott and Stacey McDermott, and move for leave to file an assented SECOND AMENDED COMPLAINT in the above matter pursuant to Fed. R. Civ. P. Rule 15(a) against Allegiance Healthcare, Inc., D. Ponce., E. W. Wylie Corporation, D. W. Smith, Arsenberger Trucking, Inc., J. T. Fosbrink, Ryder Truck Rental, Lorraine Odzana as administratrix of the Estate of James J. Odzana, Shorline Transportation, Inc., Jacylyn Paletta, as Administratrix of the Estate of Mario J. Castro.

Defendants FedEx Ground and T.S. Pruitt have assented to the filing of this Second Amended Complaint.

II. PROCEDURAL HISTORY

On October 26, 2004, Plaintiff, Steven McDermott, filed his original Complaint in U. S.

District Court for the District of Massachusetts against FedEx for damages resulting from a tractor trailer accident that occurred on February 7, 2003 in the Commonwealth of Pennsylvania.

The Plaintiff filed a Motion for Leave to File the First Amended Complaint on July 27, 2005, to include Stacey McDermott as Plaintiff and T. S. Pruitt as Defendant.

Since Defendants have answered the First Amended Complaint, there has been extensive discovery showing that a number of tractor trailers were involved in the accident, aside from the parties originally identified in the First Amended Complaint.

III. STATEMENT OF FACTS

This case arises from a tractor-trailer accident on Interstate 84, in the State of Pennsylvania on February 7, 2003. The Plaintiff, Steven McDermott, alleges he was struck by the FedEx tractor-trailer, however, that accident was only one of eight different collisions that occurred that morning over a large area of Interstate 84. The accident scene resulted in numerous injuries including one fatality.

Extensive discovery by the parties have determined that additional joint tortfeasors may be responsible for the Plaintiff's injuries. It would appear that the requested Defendants to be added were negligent in the operation of their motor vehicles

The manner in which this accident occurred may place joint tort liability on some or all Defendants named in Plaintiff's Second Amended Complaint. These added Defendants are the individual operators involved in the accident scene as well as the companies for which they were driving. Plaintiffs seek leave of court to amend their complaint to include those named Defendants.

IV. ARGUMENT

A. STANDARD FOR AMENDMENT OF COMPLAINT

Federal Rules of Civil Procedure, Rule 15(a) states in part that a party may amend the party's pleading only by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so requires. Leave can be denied, however, in the presence of "undue delay, bad faith or dilatory motive on the part of the movant, undue prejudice to the opposing party or futility of the amendment. Alvin v. Suzuki, 227 F. 3d 107, 121 (3d Cir. 2000).

In light of Rule 15's liberal policy in favor of amendment, it is the burden of the Defendant to demonstrate how the amendment will result in prejudice to them. Rush Presbyterian St. Luke's M.C. v. Safeco Ins., 722 F. Supp. 485, 496 (N.D. Ill. 1989).

The granting of this Motion will not result in prejudice to the Defendants. The Defendant's have *assented* to Plaintiff Second Amended Complaint.

Discovery has not been closed and there have been no motions for summary judgment filed.

The proposed SECOND AMENDED COMPLAINT is attached hereto as Exhibit A.

V. CONCLUSION

For the foregoing reasons the Plaintiff states that their Assented Motion for Leave to File Second Amended Complaint be granted. Pursuant to Local Rule 7.1(D), the Plaintiffs request a hearing on this Motion.

LOCAL RULE 7.1(A)(2) CERTIFICATION

The parties have conferred upon this Motion in accordance with Local Rule 7.1(A)(2) and have, in good faith, resolved this issue.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), the Plaintiffs request a hearing on this Motion if necessary.

Respectfully submitted,
Plaintiff, Steven McDermott,
Plaintiff, Stacey McDermott,
By their attorney,

/s/ Joseph M. Mahaney

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Dated: November 16, 2006

CERTIFICATE OF SERVICE

I, Joseph M. Mahaney, certify that on November 16, 2006, I served a copy of the foregoing documents: Plaintiffs Motion for Leave to File Amended Complaint and accompanying Memorandum; Plaintiffs Proposed First Amended Complaint. by mailing a copy, postage prepaid, to counsel of record:

Adam A. Larson, Esquire
Campbell, Campbell, Edwards & Conroy
One Constitution Plaza, Third Floor
Boston, Massachusetts 02129

/s/ Joseph M. Mahaney

Joseph M. Mahaney, Esq.